

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 09, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ZACHORY K.,¹

Plaintiff,

v.

LELAND DUDEK, Acting
Commissioner of Social Security,

Defendant.

No. 4:24-cv-05145-EFS

**ORDER REVERSING THE
ALJ'S DENIAL OF BENEFITS,
AND REMANDING FOR
PAYMENT OF BENEFITS**

Due to epilepsy, carpal tunnel syndrome, disc disease, major depressive disorder, and anxiety, Plaintiff Zachory K. claims he is unable to work fulltime and applied for social-security benefits. He appeals the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that the ALJ improperly analyzed the opinions of the

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 medical advisor, Dr. Porchia, as well as the consultative examiners, Dr.
2 Dyck, Dr. Jones and PA-C Brown; erred in her step-three
3 determination; and erred in failing to conduct an adequate analysis at
4 step five. As is explained below, the ALJ erred in her evaluation of Dr.
5 Porchia's opinion that Plaintiff equaled Listing 12.06. This matter is
6 remanded for payment of benefits.
7

8 **I. Background**

9 In April 2020, Plaintiff filed applications for benefits under Title
10 2 and Title 16, claiming disability beginning January 1, 2018, based on
11 the physical and mental impairments noted above.² Plaintiff's claims
12 were denied at the initial and reconsideration levels.³
13

14 After the agency denied Plaintiff benefits, ALJ Lori Freund held a
15 telephone hearing in January 2023, at which two medical experts,
16 Jerry Seligman, MD, and Tania Porchia, PsyD, appeared but at which
17 only Dr. Porchia testified.⁴ Plaintiff failed to appear for the hearing
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20 ² AR 270-272, 273-287, 288-296.

21 ³ AR 152-160, 163-169, 170-176.

22 ⁴ AR 41-58.
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1 although he had been sent a Notice of Hearing at his last known
2 address, but his attorney attended.⁵ In July 2023, ALJ Freund held a
3 supplemental telephone hearing and a vocational expert appeared and
4 testified.⁶ Plaintiff did not attend the hearing although he had been
5 sent a Notice of Hearing but his attorney appeared.⁷

7 After the hearing, the ALJ issued a decision denying benefits.⁸
8 The ALJ found Plaintiff's alleged symptoms were not entirely
9 consistent with the medical evidence and the other evidence.⁹ As to
10 medical opinions: the ALJ found:

- 11 • The reviewing testimony of Tonia Porchia, PsyD, to be
12 partially persuasive.
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16 ⁵ *Id.*

18 ⁶ AR 59-70.

19 ⁷ *Id.*

20 ⁸ AR 14-38. Per 20 C.F.R. §§ 404.1520(a)–(g), 416.920(a)-(g), a five-step
21 evaluation determines whether a claimant is disabled.

22 ⁹ AR 24-26.

- The opinions of consultative examiner Dennis Dyck, PhD, to be persuasive to the extent they are consistent with the ALJ's formulated RFC.
- The opinions of consultative examiner Nicolas Jones, PhD, to be not persuasive.
- The opinions of consultative examiner Anjelica Brown, PA-C, to be not persuasive.
- The opinions of state agency evaluators Rita Flanagan, PhD, and Andrew Forsyth, PhD, to be persuasive.
- The opinions of state agency evaluators Alnoor Virji, MD, and Norman Staley, MD, to be persuasive.¹⁰

As to the sequential disability analysis, the ALJ found:

- Plaintiff met the insured status requirements through December 31, 2020.

¹⁰ NP Lara stated that she was unable to render a medical opinion without consulting her supervising physician. The ALJ treated her doing so as a statement of nondisability.

- 1 • Step one: Plaintiff had not engaged in substantial gainful
2 activity since January 1, 2018, the alleged onset date.
- 3 • Step two: Plaintiff had the following medically determinable
4 severe impairments: seizure disorder, unspecified anxiety
5 disorder, and polysubstance use disorder. The ALJ also
6 found Plaintiff's cervicalgia and history of carpal tunnel
7 status post release to be nonsevere.
- 8 • Step three: Plaintiff did not have an impairment or
9 combination of impairments that met or medically equaled
10 the severity of one of the listed impairments and specifically
11 considered Listings 11.02 and 12.06.
- 12 • RFC: Plaintiff had the RFC to perform light work with the
13 following exceptions:
14 [Plaintiff] should avoid climbing ladders, ropes, and
15 scaffolds, unprotected heights, working around
16 large bodies of water, and operating moving
17 machinery including an automobile. He could
18 frequently climb ramps and stairs, balance, stoop,
19 kneel, crouch, crawl, and reach overhead
20 bilaterally. He should avoid moderate exposure to
21 hazards and excessive vibrations. He would be
22 limited to simple and repetitive tasks with only
23 occasional changes in a work setting. He would
 need to avoid working directly with the general

public and could have occasional interaction with co-workers.

- Step four: Plaintiff was not capable of performing past relevant work.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as routing clerk (DOT 222.687-014), night cleaner (DOT 323.687-014), and small products assembler (DOT 706.684-022).¹¹

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.¹²

¹¹ AR 20-31.

¹² AR 267.

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"¹³ and such error impacted the nondisability determination.¹⁴ Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁵

¹³ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g);

¹⁴ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that "is inconsequential to the ultimate nondisability determination").

¹⁵ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence

III. Analysis

Plaintiff argues the ALJ erred in her evaluation of the medical opinion of the medical expert, Dr. Porchia, as well as the opinions of the consultative examiners, Dr. Dyck, Dr. Jones, and PA-C Brown; failed to conduct an adequate evaluation at step three and erred in her analysis at step five. The Commissioner argues that the ALJ properly evaluated the opinions of the medical expert and the consultative examiners, properly found that Plaintiff did not meet or equal Listing 12.06, and properly evaluated Plaintiff's ability to engage in available jobs at step five. The Court disagrees with the Commissioner. As is explained below, the ALJ's analysis of the medical opinions in general, and Dr. Porchia's specifically, contains consequential error.

cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

1 **A. Medical Opinions: Plaintiff established consequential**
2 **error.**

3 Plaintiff argues the ALJ failed to properly consider the opinions
4 of Dr. Porchia, Dr. Dyck, Dr. Jones, and PA-C Brown. As discussed
5 below, the ALJ erred as to her evaluation of the opinions of Dr.
6 Porchia.¹⁶

8 1. Standard

9 An ALJ must consider and evaluate the persuasiveness of all
10 medical opinions.¹⁷ The ALJ need not however “give any specific
11 evidentiary weight . . . to any medical opinion(s).”¹⁸ The factors for
12 evaluating the persuasiveness of medical opinions include, but are not
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15 ¹⁶ An ALJ must consider and articulate how persuasive she found each
16 medical opinion, including whether the medical opinion was consistent
17 with and supported by the record. 20 C.F.R. §§ 404.1520c(a)–(c);
18 416.920c(a)-(c), *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

19 ¹⁷ 20 C.F.R. §§ 404.1520c(a), 416.920c(a).

21 ¹⁸ Revisions to Rules, 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68;
22 *see* 20 C.F.R. §§ 404.1520c(a), 416.920c(a).

1 limited to, supportability, consistency, relationship with the claimant,
2 and specialization.¹⁹ Supportability and consistency are the most
3 important factors, and the ALJ is required to explain how both of these
4 factors were considered:²⁰

5
6 (1) Supportability. The more relevant the objective medical
7 evidence and supporting explanations presented by a
8 medical source are to support his or her medical opinion(s)
9 or prior administrative medical finding(s), the more
10 persuasive the medical opinions or prior administrative
11 medical finding(s) will be.

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13 (2) Consistency. The more consistent a medical opinion(s) or
14 prior administrative medical finding(s) is with the evidence
15 from other medical sources and nonmedical sources in the
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¹⁹ *Id.* §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). When assessing the
medical source's relationship with the claimant, the ALJ is to consider
the treatment length, frequency, purpose, and extent, and whether an
examination was conducted. The ALJ may also consider whether the
medical source has familiarity with the other record evidence or an
understanding of the disability program's policies and evidentiary
requirements.

²⁰ *Id.* §§ 404.1520c(b)(2), 416.920c(b)(2).

1 claim, the more persuasive the medical opinion(s) or prior
2 administrative medical finding(s) will be.²¹

3 Typically, the ALJ may, but is not required to, explain how the other
4 factors were considered.²²

5 2. Testimony

6 Because the Court focuses its evaluation on the ALJ's evaluation
7 of Dr. Porchia's testimony, only the relevant testimony is referenced.
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9 *a. Plaintiff's Written Testimony*

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15 ²¹ *Id.* §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(5).

16 ²² *Id.* §§ 404.1520c(b)(2), 416.920c(b)(2). When two or more medical
17 opinions or prior administrative findings “about the same issue are
18 both equally well-supported . . . and consistent with the record . . . but
19 are not exactly the same,” the ALJ is required to explain how “the
20 other most persuasive factors in paragraphs (c)(3) through (c)(5)” were
21 considered. *Id.* §§ 404.1520c(b)(3), 416.920c(b)(3).
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1 On April 13, 2020, Plaintiff completed an Adult Function
2 Report.²³ He reported that he lived in a house with family.²⁴ He wrote
3 that his condition limits his ability to work because it is dangerous for
4 him to stand or sit near sharp objects or a hard floor because he might
5 suffer a head injury during a grand mal seizure.²⁵
6

7 Plaintiff described his daily activity as waking and waiting to
8 make sure he does not feel a seizure coming, taking his medication and
9 eating breakfast and then watching TV or reading until dinner.²⁶
10 Plaintiff said that he does not care for anyone and has a dog that is
11 cared for by his father.²⁷ He said that he used to be able to do physical
12 activities and learn new things and that he at times has seizures while
13 asleep.²⁸ He said that after a seizure he needs to be reminded to take
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16 ²³ AR 381-388.

17 ²⁴ AR 381.

18 ²⁵ *Id.*

19 ²⁶ AR 382.

20 ²⁷ *Id.*

21 ²⁸ *Id.*

1 care of personal needs and that his father had to remind him to take
2 his medication because of problems with his memory.²⁹

3 Plaintiff said he can prepare his own meals and that he will try to
4 do cleaning and laundry if he has been seizure free.³⁰ Plaintiff wrote
5 that he tries to go outside daily but that he walks because he cannot
6 drive car due to his epilepsy.³¹ He said that he shops for food twice a
7 month and it takes about 2 hours, and that he is able to handle money
8 and pay bills but that he has difficulty remembering amounts.³²

9 Plaintiff said he reads and watches TV daily and that he likes to fish
10 but only goes rarely because he goes after he has not had a seizure for
11 a while.³³ He said that he spends time with his father, who he lives
12 with daily, and talks to his mother by phone once a week.³⁴ Plaintiff
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16 ²⁹ AR 383.

17 ³⁰ *Id.*

18 ³¹ AR 384.

19 ³² AR 384-385.

20 ³³ AR 385.

21 ³⁴ *Id.*

1 said he goes out to the grocery store weekly and the doctor once a
2 month, and that he needs someone to go with him.³⁵

3 Plaintiff stated that his social activities have been taken away
4 because of a high risk of grand mal seizures.³⁶ He reported that his
5 conditions affect the following: talking, hearing, seeing, memory,
6 completing tasks, concentration, understanding, and following
7 directions.³⁷ He said that he speaks slowly, his hearing is getting
8 worse, his memory is bad and that he is only able to concentrate and
9 understand things when he has been seizure-free.³⁸ He reported that
10 he is left-handed, that he can walk for a quarter mile before stopping
11 15 minutes, that he can pay attention for up to 10 minutes, and that he
12 can follow directions if given enough time and given the directions
13 multiple times.³⁹ Plaintiff said that he gets along with authority figures
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17 ³⁵ *Id.*

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19 ³⁶ AR 386.

20 ³⁷ *Id.*

21 ³⁸ *Id.*

22 ³⁹ *Id.*

1 well and has never been fired for problems getting along with others,
2 that he will have a seizure if he has too much stress, and that he can
3 handle changes in routine if given enough time.⁴⁰ He said that he was
4 taking the medication Lamotrigine ER (a/k/a Lamictal) and that he
5 suffered side effects of memory loss, drowsiness, and dizziness.⁴¹
6

7 *b. Dr. Porchia's Testimony*

8 On January 11, 2023, Tonia Porchia, PsyD, appeared via
9 telephone to testify as a medical expert at a hearing before ALJ Lori
10 Freund at the request of the Commissioner.⁴² Dr. Porchia testified that
11 she had no prior contact with Plaintiff or his attorney and that she
12 would testify impartially despite the fact that the Social Security
13 Administration was paying her fee.⁴³ Dr. Porchia testified that she had
14 reviewed all the medical records in evidence up to and including 15F.⁴⁴
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17 ⁴⁰ AR 387.

18 ⁴¹ AR 388.

19 ⁴² AR 41-58.

20 ⁴³ AR 51-52.

21 ⁴⁴ AR 52.

1 Dr. Porchia testified that Plaintiff has epilepsy as well as specified
2 depressive and anxiety disorders, as well as methamphetamine abuse
3 and opiate use that might or might not have been in remission.⁴⁵ Dr.
4 Porchia testified that Plaintiff's case was complex because Plaintiff had
5 a seizure disorder and that it was a trigger for anxiety and depressive
6 symptoms.⁴⁶

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8 Dr. Porchia testified that based upon what was in the record,
9 including the consultative examination reports, she opined that
10 Plaintiff's mental impairments equal Listing 12.06 because the
11 symptoms are often triggered by the seizure disorder.⁴⁷ Dr. Porchia
12 stated that this was supported by the findings of the psyche
13 evaluations performed in April 2021 and July 2020.⁴⁸ She opined that
14 Plaintiff has memory problems and difficulty concentrating due to the
15 anxiety symptoms that accompany his epilepsy and stated that he had
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19 ⁴⁵ AR 53.

20 ⁴⁶ *Id.*

21 ⁴⁷ *Id.*

22 ⁴⁸ *Id.*

1 depressive symptoms as well but the basis for the limitations was the
2 anxiety, so the difficulty concentrating would exist as long as the
3 seizures continued.⁴⁹ She also testified that those limitations would be
4 absent any drug or alcohol abuse, so Plaintiff's prior substance use is
5 not material.⁵⁰
6

7 Dr. Porchia explained that the limitations she opined were
8 consistent with the medical evaluation located at Exhibit 12F.⁵¹ Dr.
9 Porchia said that even though there were medical records outstanding
10 the existing records were pretty clear in showing, starting with Exhibit
11 2F, that Plaintiff's seizures were triggered by a head injury he
12 sustained in a dirt bike accident in 2005 and that a seizure disorder of
13 this magnitude present for so long would not fade away.⁵² Dr. Porchia
14 said that the records showed that Plaintiff was not compliant with
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19 ⁴⁹ AR 53-54.

20 ⁵⁰ AR 54.

21 ⁵¹ *Id.*

22 ⁵² *Id.*
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1 medication but that she believed that Plaintiff's symptoms impact his
2 ability to remember to take his medication and stay compliant.⁵³

3 Dr. Porchia addressed the A and B criteria, noting that Plaintiff
4 had a number of B criteria, such as being easily fatigued, difficulty
5 concentrating, irritability, and difficulty with sleep.⁵⁴ Dr. Porchia
6 opined that Plaintiff would have a mild limitation in the ability to
7 understand, remember, and apply information due to short term
8 memory issues.⁵⁵ She opined that Plaintiff would have a moderate
9 limitation in the ability to interact with others due to anxiety.⁵⁶ Dr.
10 Porchia opined that Plaintiff would have a marked limitation in the
11 ability to concentrate, persist, and maintain pace, and the ability to
12 adapt or manage oneself because the seizures are unpredictable and
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19 ⁵³ AR 54-55.

20 ⁵⁴ AR 55.

21 ⁵⁵ *Id.*

22 ⁵⁶ *Id.*

1 they trigger anxiety, which affects the ability to maintain pace or
2 manage stressors.⁵⁷

3 Dr. Porchia testified that she did not see any C criteria. And that
4 the limitations she opined to had existed since at least January 2018.⁵⁸
5

6 3. Relevant Medical Records

7 a. Dr. Dyck

8 On July 10, 2020, Plaintiff was examined by Dennis Dyck, PhD,
9 at the request of the Commissioner.⁵⁹ Plaintiff reported complaints of
10 anxiety, depression, memory difficulty, insomnia, epilepsy, left wrist
11 injury, and back injury, and that he experienced head trauma in a
12 motor vehicle accident.⁶⁰ Dr. Dyck indicated that he reviewed medical
13 records from Kadlec Regional Medical Center, Sacred Heart Medical
14 Center, and Eastern Washington Epilepsy Center.⁶¹
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17 ⁵⁷ *Id.*

18 ⁵⁸ AR 56.

19 ⁵⁹ AR 985-989.

20 ⁶⁰ AR 985.

21 ⁶¹ *Id.*

1 Plaintiff reported that he first experienced seizures at age 13,
2 that he overdosed in July 2018 and that he went to the ER in May 2018
3 but had never been hospitalized psychiatrically.⁶² Plaintiff reported he
4 was taking Zoloft and was sleeping better and less depressed, that his
5 anxiety is increased by being around others and by seizures, that he
6 had an opioid addiction that he quit in July 2019 but has had relapses,
7 and that he had a severe head injury and back injury when struck by a
8 car on his bike and had several back surgeries.⁶³ Plaintiff reported that
9 he last worked in a restoration business but was laid off due to his
10 epilepsy, that he is single and lives with his father, that he completed
11 to 10th grade and has a GED, and that he is currently taking Lamictal
12 ER.⁶⁴
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15 On mental status examination, Dr. Dyck found Plaintiff had
16 proper hygiene, did not appear to be malingering, had normal speech
17 and thought process, was oriented, was able to follow a three-step
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20 ⁶² AR 985-986.

21 ⁶³ AR 986.

22 ⁶⁴ *Id.*
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1 command, had difficulty with abstract thinking, and had reasonably
2 good insight and judgment.⁶⁵ Dr. Dyck noted that Plaintiff appeared to
3 be capable of performing activities such as cooking, cleaning, and
4 bathing, but questioned his own ability to handle funds; was able to
5 concentrate to go fishing but does little reading; is partially self-
6 isolating and does not attend social events; and has a recurring
7 problem with deterioration or decompensation in the workplace due to
8 seizures.⁶⁶

10 Dr. Dyck diagnosed Plaintiff with adjustment disorder with
11 anxiety and depression due to a chronic medical condition, with
12 moderate to severe symptoms, and opined that his prognosis was
13 guarded.⁶⁷ Dr. Dyck opined as to the following functional assessment:

15 [Plaintiff] appears to have the clear ability to reason and
16 understand. He does have some adaptation skills. Remote
17 memory is intact. Recent and immediate memory are intact.
18 Sustained concentration and persistence are adequate based
on the brief concentration tasks of this evaluation. The
claimant does describe an ability to follow through on tasks

20 ⁶⁵ AR 987-988.

21 ⁶⁶ AR 988.

22 ⁶⁷ *Id.*

1 in his home environment. He does describe interpersonal
2 challenges in his personal life and in prior work
3 environments as a result of his anxiety and epilepsy. His
4 ability to interact with co-workers and the public is likely
5 moderately impaired. Due to his anxiety and epilepsy his
6 ability to maintain regular attendance in the workplace is
7 between moderately and markedly impaired. His ability to
8 complete a normal work day or work week without
9 interruption from his anxiety and epilepsy is likely markedly
10 impaired. His ability to deal with the usual stress
11 encountered in the workplace is markedly impaired if it
12 involves being around other individuals. He appears to have
13 significant physical limitations that would be better assessed
14 by a medical provider.⁶⁸

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16 *b. Dr. Jones*

17 On April 8, 2021, Plaintiff was examined by Nikolas Jones, PhD,
18 at the request of the Commissioner.⁶⁹ Plaintiff reported that he had
19 been diagnosed with epilepsy at age 13 after a dirt bike accident, when
20 he suffered a concussion and back injury and that his memory and pace
21 had gotten worse since.⁷⁰ Plaintiff also reported memory fog, carpal
22 tunnel syndrome in his left dominant hand, and that he is missing
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24 ⁶⁸ *Id.*

25 ⁶⁹ AR 1018-1021.

26 ⁷⁰ AR 1018.

1 discs in his spine at C6-7 as a result of the dirt bike accident.⁷¹ Plaintiff
2 reported that he thinks and performs tasks slowly and that he has lost
3 jobs because of his slow pace.⁷² Plaintiff reported that he used opiates
4 for 6-8 years but had stopped in 2018 and now took methadone, as well
5 as Trazadone and Lamictal ER.⁷³
6

7 Plaintiff reported that he had past arrests for harassment, theft,
8 and drug possession but had none since 2017.⁷⁴ Plaintiff reported that
9 he had no friends, that he failed high school after the accident but later
10 got a GED, and that his longest job was in 2017 for one year, but he
11 lost it due to a seizure and slow pace.⁷⁵ Plaintiff said that he spends his
12 days watching television, playing with his dog, doing small chores, and
13 heating ready-made meals.⁷⁶
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16 ⁷¹ *Id.*

17 ⁷² *Id.*

18 ⁷³ *Id.*

19 ⁷⁴ AR 1019.

20 ⁷⁵ *Id.*

21 ⁷⁶ *Id.*

1 On mental status examination Plaintiff appeared disheveled, had
2 at times a very slow rate of speech, had poor insight and fair judgment,
3 had calm mood, was not fully oriented, had a good fund of knowledge,
4 had good abstract reasoning, and had good practical reasoning.⁷⁷
5 Dr. Jones found that Plaintiff struggled with poor social functioning,
6 tends to isolate, and has below average conversation skills.⁷⁸ Dr. Jones
7 found that Plaintiff is unable to engage in and sustain activities for
8 appropriate lengths of time, had a below average pace, and did not
9 persist in difficult activities.⁷⁹ Dr. Jones diagnosed insomnia disorder;
10 major depressive disorder, recurrent, moderate; generalized anxiety
11 disorder; and rule-out mild neurocognitive disorder due to TBI.⁸⁰
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14 Dr. Jones opined that Plaintiff would have a low-to-moderate risk
15 of decompensation.⁸¹ Dr. Jones opined the following:
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17 ⁷⁷ *Id.*

18 ⁷⁸ AR 1020.

19 ⁷⁹ *Id.*

20 ⁸⁰ *Id.*

21 ⁸¹ *Id.*

[Plaintiff] is a 30-year-old male with a history of a severe MVA as a teenager and persistent language, memory, processing speed, and behavior problems since that time. Additionally, he exhibits symptoms of moderate recurrent Major Depressive Disorder and Generalized Anxiety Disorder. His symptoms together with his task pace and work history make it more likely than not that [Plaintiff] will have struggles to be successful in a work environment. [Plaintiff] will likely experience a normal level of absenteeism but performance pace will continue to be well below average. As such, [Plaintiff] will likely struggle to obtain and maintain employment. It is recommended that [Plaintiff] seek individual counseling on an ongoing basis. Overall prognosis is fair. It is recommended that he be evaluated for neurocognitive deficits due to TBI. All physical symptoms are referred to a medical provider.⁸²

4. The ALJ's consideration of Dr. Porchia's opinions

The ALJ summarized Dr. Porchia's testimony in great detail.⁸³

The ALJ then went on to state:

The undersigned finds the testimony of Dr. Porchia partially persuasive. Dr. Porchia reviewed the entirety of the medical record and is familiar with the Social Security Act, Listings, and Regulations but her testimony is somewhat consistent with the medical evidence, with the exception that she testified the claimant has depressive and anxiety symptoms which she found related to his epilepsy as well as methamphetamine abuse and opioid use in the past.

⁸² *Id.*

⁸³ AR 26.

1 She stated this was a complex case due to the claimant's
2 seizure disorder triggering his depressive and anxiety
3 symptoms. She found the claimant equaled 12.06 because
4 his depression is triggered by his seizure disorder, but this
5 opinion is not supported by the record. The claimant has not
6 been compliant with medication. (Ex. 8F/7, 9). Additionally,
7 during the psychological consultative examination with
8 Dennis Dyck, Ph.D. in July of 2020, the claimant was noted
9 to have adaptation skills and adequate sustained
10 concentration and persistence. The claimant reported he
11 was able to concentrate and sustain with several activities.
12 (Ex. 6F/4). The claimant was able to perform serial sevens
13 and could spell the word "world" correctly in both the
14 forward and backward direction. Additionally, he was able
15 to identify three out of three objects during a recent memory
16 test. (Ex. 6F/3).⁸⁴

17 The ALJ discounted Dr. Porchia's opinions because 1) the ALJ
18 found the opinions were not supported by the record, 2) Plaintiff had
19 been noncompliant with his medication, and 3) during a consultative
20 examination with Dr. Dyck Plaintiff was noted to have adaptation
21 skills and the adequate concentration and persistence.⁸⁵

22 a. *The ALJ failed to meaningfully analyze whether*
23 *Dr. Porchia's opinion was supported by the evidence.*

21 ⁸⁴ AR 26-27.

22 ⁸⁵ *Id.*

1 It is the duty of the ALJ to explain their consideration of two
2 factors: supportability and consistency.⁸⁶ While the ALJ made some
3 attempt to address the consistency factor, she did not address the
4 supportability factor in any meaningful way.

5 Dr. Porchia explained that she based her opinions on the findings
6 of the consultative examinations of Dr. Dyck and Dr. Jones. At no
7 time, did the ALJ address the finding of Dr. Jones on the mental status
8 examination. Moreover, the ALJ did not properly address the finding
9 of Dr. Dyck on the mental status examination as a whole and instead
10 referenced only the limited portion of Dr. Dyck's findings that
11 supported her position.
12

13 The ALJ failed to acknowledge the findings of marked
14 limitations, which were opined to by both Dr. Jones and Dr. Dyck.
15 Instead, the ALJ only addressed the limited findings in which Dr. Dyck
16 opined to milder limitations. Moreover, she took those milder
17 limitations out of context. Context is crucial as "treatment records
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22 ⁸⁶ 20 C.F.R. §§ 404.1520c(a), 416.960c(a)..
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1 must be viewed in light of the overall diagnostic record.”⁸⁷ An ALJ may
2 not cherry pick evidence to support a conclusion while ignoring other
3 competent evidence in the record.⁸⁸ The ALJ did so in this matter.

4 Thus, the ALJ failed to adequately articulate any of her findings
5 regarding the supportability factor of 20 C.F.R. §§ 404.1520c,
6 416.920(c) as mandated by the regulation.
7

8 b. The ALJ’s finding that Dr. Porchia’s opinions are
9 inconsistent with the record is not supported by substantial
10 evidence.

11 Whether a medical opinion is consistent with the longitudinal
12 record—including Plaintiff’s reported symptoms or the medical findings
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16 ⁸⁷ *Ghanim v Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014).

17 ⁸⁸ *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) (cleaned up)
18 (“Although it is within the power of the Secretary to make findings
19 concerning the credibility of a witness ..., he cannot reach a conclusion
20 first, and then attempt to justify it by ignoring competent evidence in
21 the record that suggests an opposite result.”).
22
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1 and observations—is a factor the ALJ must consider.⁸⁹ The consistency
2 inquiry is not simply a comparison of the opinions given by medical
3 sources. It is a comparison of the medical opinion in question to
4 “*evidence* from other medical sources and nonmedical sources.”⁹⁰
5

6 The ALJ articulated two reasons why she found Dr. Porchia’s
7 opinions to be inconsistent with the overall record: 1) Plaintiff’s was
8 noncompliant with his medication, and 2) they were inconsistent with
9 Dr. Dyck’s finding on mental status examination.⁹¹ The Court
10 concludes that the ALJ’s reasoning that Dr. Porchia’s opinions are
11 inconsistent with the overall record is flawed.
12

13 First, as to the cited evidence that Plaintiff was not complaint
14 with medication, the ALJ is in error. The ALJ cited to two pages in the
15 entire record in which she states Plaintiff was noted to be
16 noncompliant, located at Exhibit 8F, pages 7 and 9. But those records
17 do not state exactly what the ALJ says they state.
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20 ⁸⁹ 20 C.F.R. § 404.1520c(b)(2).

21 ⁹⁰ 20 C.F.R. § 404.1520c(c)(1) (emphasis added).

22 ⁹¹ AR 26-2732.
23

1 At Exhibit 8F, pages 6-7 are a portion of a treatment note from an
2 office visit with Dr. Nathasha Sparrow of the Eastern Washington
3 Epilepsy Center on January 8, 2021.⁹² The record at 8F, pages 6-7
4 shows that in the years before quitting methamphetamine in 2019
5 Plaintiff was noncompliant in taking his Lamictal, but in 2019 he
6 became compliant and thereafter only failed to take his medication on
7 two occasions in 2020: the first instance being for 2 days when he was
8 in pain from tooth extraction and the second being a time he was
9 incarcerated for 3 days and did not have access to the medication.⁹³
10 Dr. Sparrow noted that with the exception of those two instances “[h]e
11 is otherwise compliant with Lamictal.”⁹⁴At Exhibit 8F, page 9, Dr.
12 Sparrow repeats her statement that other than those two occasions,
13 Plaintiff was compliant with his medication.⁹⁵
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19 ⁹² AR 1008-1009.

20 ⁹³ AR 1008-1009.

21 ⁹⁴ AR 1009.

22 ⁹⁵ Ar 1011.

1 As to the ALJ's reasoning that Dr. Porchia's opinion is
2 inconsistent with Dr. Dyck's finding on mental status examination that
3 Plaintiff had adaptation skills, the Court notes, as previously discussed
4 above that the ALJ erred both in citing to only the portion of Dr. Dyck's
5 finding that supported her conclusions and in taking the finding out of
6 context. It is of note that Dr. Dyck did not find that Plaintiff had
7 "adaptation skills" but rather said he had "some adaptation skills."⁹⁶
8 The ALJ did not consider that Dr. Dyck went on to find that Plaintiff's
9 ability to adapt to the usual stresses in the workplace would be
10 markedly impaired if it involved being around others.⁹⁷
11

12 The Court concludes that the opinions of Dr. Porchia are
13 consistent with the opined moderate and marked limitations found by
14 both Dr. Dyck and Dr. Jones and are supported by and consistent with
15 the record. The Court finds that the ALJ erred in discrediting
16 Dr. Porchia's opinion that Plaintiff equals Listing 12.06 and remands
17 for a payment of benefits.
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21 ⁹⁶ AR 987.

22 ⁹⁷ AR 988.
23

1 **B. Step Three (Listings): The ALJ erred.**

2 Because the Court has found that the ALJ erred in failing to
3 credit Dr. Porchia's opinion that Plaintiff equals Listing 12.06, the ALJ
4 has erred. As explained above, once credit is given to Dr. Porchia's
5 opinion that Plaintiff equaled Listing 12.06 from at least the alleged
6 date of onset, a remand for a calculation of benefits is warranted.
7

8 **C. RFC: This issue is moot.**

9 Because the Court has remanded the case to the Commissioner
10 for a calculation of benefits, this issue is moot.
11

12 **IV. Conclusion**

13 Remand for further administrative proceedings is the usual
14 course when a harmful error occurs in the administrative proceeding,
15 except in rare circumstances.⁹⁸ This is a rare circumstance where an
16 award of benefits is appropriate.
17
18

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20 ⁹⁸ *Treichler v. Comm'r of Social Sec. Admin.*, 775 F.3d 1090, 1099 (9th
21 Cir. 2014) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744
22 (1985)).
23

1 First, the ALJ failed to provide legally sufficient reasons for
2 rejecting the opinions of Dr. Porchia.

3 Second, further administrative proceedings will offer no benefit—
4 the record is fully developed.⁹⁹ “Allowing the Commissioner to decide
5 the issue again would create an unfair ‘heads we win; tails, let’s play
6 again’ system of disability benefits adjudication.”¹⁰⁰

7
8 Third, when Dr. Porchia’s opinions are fully credited, the
9 regulations require a finding that Plaintiff is disabled.¹⁰¹ Plaintiff is
10 unable to sustain fulltime work.

11 An award of benefits is warranted

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13
14 1. The ALJ’s nondisability decision is **REVERSED**, and this
15 matter is **REMANDED** to the Commissioner of Social
16 Security for a calculation of benefits pursuant to sentence
17 four of 42 U.S.C. § 405(g).

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20 ⁹⁹ *See id.*

21 ¹⁰⁰ *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004).

22 ¹⁰¹ 20 C.F.R. § 404, Part 220, Appendix 1

1 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF**
2 **Nos. 6 and 8**, enter **JUDGMENT** in favor of **Plaintiff**, and
3 **CLOSE** the case.

4 IT IS SO ORDERED. The Clerk's Office is directed to file this
5 order and provide copies to all counsel.
6

7 DATED this 9th day of April, 2025.

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10 EDWARD F. SHEA
11 Senior United States District Judge
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